

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH BILLINGSLEY AUCTION SALE, INC.**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Billingsley Auction Sale, Inc. ("Billingsley") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences¹ in the sums of the Estimated Net Exposure without further order of the Court.

4. Based on his investigation, the Trustee concluded that Billingsley received not less than \$119,413.18 in transfers from the Debtor (collectively, the "Transfers").

5. The Trustee commenced Adversary Proceeding No. 12-59050 against Billingsley on December 20, 2012 to avoid and recover the Transfers from Billingsley ("Preference Claim"). Subsequent to the filing of the Complaint, Billingsley has strongly defended the Preference Claim and has asserted defenses that arguably and significantly reduce Billingsley's Estimated Net Exposure.

The Settlement

6. To avoid the cost, expense, and delay of further litigation, Billingsley is willing to make immediate payment of \$20,000.00 (the "Settlement Amount"), in satisfaction of the Preference Claim, provided the Court enters a final, non-appealable order approving this Settlement Motion. Billingsley has already tendered the Settlement Amount to the Trustee. In exchange, the parties have dismissed all claims against one another, and Billingsley has also waived any distribution from the Estate.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

7. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

8. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Preference Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

9. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Billingsley pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

Basis for Relief

10. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

11. Although the Trustee believes there is legal and factual support for the Preference Claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the Preference Claim, (ii) the probability of success in prosecuting the Preference Claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

12. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

13. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Amanda D. Stafford
Amanda D. Stafford, Attorney No. 30869-49
111 Monument Circle, Suite 900

Indianapolis, IN 46204-5125
(317) 777-7428 Phone & Fax
ads@kgrlaw.com

*Attorneys for James A. Knauer,
Chapter 11 Trustee*

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt davidabt@mwt.net	Amelia Martin Adams adams@dlgfirm.com	John W. Ames james@bgdlegal.com
Kay Dee Baird kbaird@kdlegal.com	Christopher E. Baker cbaker@thblkaw.com	Robert A. Bell rabell@vorys.com
C. R. Bowles, Jr cbowles@ bgdlegal.com	David W. Brangers dbrangers@lawyer.com	Steven A. Brehm sbrehm@ bgdlegal.com
Kent A Britt kabritt@vorys.com	Kayla D. Britton kayla.britton@faegrebd.com	Joe Lee Brown Joe.Brown@Hardincounty.biz
Lisa Koch Bryant courtmail@fbhllaw.net	John R. Burns, III john.burns@faegrebd.com	John R. Carr, III jrcriii@acs-law.com
Deborah Caruso dcaruso@daleeke.com	Ben T. Caughey ben.caughey@icemiller.com	Bret S. Clement bclement@acs-law.com
Joshua Elliott Clubb joshclubb@gmail.com	Jason W. Cottrell jwc@stuartlaw.com	Kirk Crutcher kcrutcher@mcs-law.com
Jack S. Dawson jdawson@millerdollarhide.com	Dustin R. DeNeal dustin.deneal@faegrebd.com	Laura Day Delcotto lodelcotto@dlgfirm.com
David Alan Domina dad@dominalaw.com	Daniel J. Donnellon ddonnellan@fclaw.com	Trevor L. Earl tearl@rwsvlaw.com
Shawna M. Eikenberry shawna.eikenberry@faegrebd.com	Jeffrey R. Erler jerler@ghjlaw.com	William K. Flynn wkflynn@strausstroy.com
Robert Hughes Foree robertforee@bellsouth.net	Sandra D. Freeburger sfreeburger@dsf- atty.com	Melissa S. Giberson msgiberson@vorys.com
Thomas P. Glass tpglass@strausstroy.com	Patrick B. Griffin patrick.griffin@kutakrock.com	Terry E. Hall terry.hall@faegrebd.com
Paul M. Hoffman paul.hoffmann@stinsonleonard.com	John David Hoover jdhoover@hooverhull.com	John Huffaker john.huffaker@sprouselaw.com
Jeffrey L. Hunter jeff.hunter@usdoj.gov	Jay Jaffe jay.jaffe@faegrebd.com	James Bryan Johnston bjtxas59@hotmail.com
Todd J. Johnston tjohnston@mcjllp.com	Jill Zengler Julian Jill.Julian@usdoj.gov	Jay P. Kennedy jpk@kgrlaw.com
Edward M. King tking@fbtlaw.com	James A. Knauer jak@kgrlaw.com	Erick P. Knoblock eknoblock@daleeke.com
Theodore A. Konstantinopoulos ndohbky@jbandr.com	Randall D. LaTour rdlatour@vorys.com	David A. Laird david.laird@moyewhite.com
David L. LeBas dlebas@namanhowell.com	Martha R. Lehman mlehman@kdlegal.com	Scott R. Leisz sleisz@bgdlegal.com
Elliott D. Levin edl@rubin-levin.net	Kim Martin Lewis kim.lewis@dinslaw.com	James B. Lind jblind@vorys.com
Karen L. Lobring lobring@msn.com	Jason A. Lopp jlopp@wyattfirm.com	John Hunt Lovell john@lovell-law.net
Harmony A. Mappes harmony.mappes@faegrebd.com	John Frederick Massouh john.massouh@sprouselaw.com	Michael W. McClain mmcclain@mcclaineweeks.com
Kelly Greene McConnell lisahughes@givenspurley.com	James Edwin McGhee mcghee@derbycitylaw.com	Brian H. Meldrum bmeldrum@stites.com
William Robert Meyer, II rmeyer@stites.com	Kevin J. Mitchell kevin.mitchell@faegrebd.com	Terrill K. Moffett kendalcantrell@moffettlaw.com
Allen Morris amorris@stites.com	Judy Hamilton Morse judy.morse@crowedunlevy.com	Erin Casey Nave enave@taftlaw.com
Matthew Daniel Neumann mneumann@hhclaw.com	Walter Scott Newbern wsnewbern@msn.com	Shiv Ghuman O'Neill shiv.oneill@faegrebd.com

Matthew J. Ochs kim.maynes@moyewhite.com	Jessica Lynn Olsheski jessica.olsheski@justice-law.net	Michael Wayne Oyler moyer@rwsvlaw.com
Ross A. Plourde ross.plourde@mcafeetaft.com	Brian Robert Pollock bpollock@stites.com	Wendy W. Ponader wendy.ponader@faegrebd.com
Timothy T. Pridmore tpridmore@mcjllp.com	Anthony G. Raluy traluy@fbhllaw.net	Eric C. Redman ksmith@redmanludwig.com
Eric W. Richardson ewrichardson@vorys.com	Joe T. Roberts jratty@windstream.net	David Cooper Robertson crobertson@stites.com
Mark A. Robinson mrobinson@vhrlaw.com	Jeremy S. Rogers Jeremy.Rogers@dinslaw.com	John M. Rogers johnr@rubin-levin.net
Joseph H. Rogers jrogers@millerdollarhide.com	James E. Rossow jim@rubin-levin.net	Steven Eric Runyan ser@kgrlaw.com
Niccole R. Sadowski nsadowski@thbklaw.com	Thomas C. Scherer tscherer@bgdlegal.com	Stephen E. Schilling seschilling@strausstroy.com
Ivana B. Shallercross ishallcross@bgdlegal.com	Sarah Elizabeth Sharp sarah.sharp@faegrebd.com	Suzanne M Shehan suzanne.shehan@kutakrock.com
James E. Smith, Jr. jsmith@smithakins.com	William E. Smith, III wsmith@kglaw.com	Amanda Dalton Stafford ads@kgrlaw.com
Joshua N. Stine kabritt@vorys.com	Andrew D. Stosberg astosberg@lloydmc.com	Matthew R. Strzynski indyattorney@hotmail.com
Meredith R. Theisen mtheisen@daleeke.com	John M. Thompson john.thompson@crowdedunlevy.com	Kevin M. Toner kevin.toner@faegrebd.com
Christopher M. Trapp ctrapp@rubin-levin.net	Chrisandrea L. Turner clturner@stites.com	U.S. Trustee ustpregion10.in.ecf@usdoj.gov
Andrew James Vandiver avandiver@aswdlaw.com	Andrea L. Wasson andrea@wassonthornhill.com	Jennifer Watt jwatt@kgrlaw.com
Stephen A. Weigand sweigand@fielaw.com	Charles R. Wharton Charles.R.Wharton@usdoj.gov	Sean T. White swhite@hooverhull.com
Michael Benton Willey michael.willey@ag.tn.gov	Jason P. Wischmeyer jason@wischmeyerlaw.com	James T. Young james@rubin-levin.net

I further certify that on July 22, 2016, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Thomas Richard Alexander, II
tra@rgba-law.com

/s/ Amanda D. Stafford
Amanda D. Stafford